

§ 400.713

on a comparison with the amount of reimbursement for maintenance previously received, the number of policies, the number of approved insurance providers, and the expected total amount of user fees to be received in any reinsurance year.

(6) A user fee unnecessarily inhibits the use of a policy or plan of insurance if it is so high that other approved insurance providers are unable to pay such fees because of the volume of business currently underwritten by the approved insurance provider.

(7) The user fee charged to each approved insurance provider will be considered payment in full for the use of such policy, plan of insurance or rate of premium for the reinsurance year in which payment is made.

(l) The Board may consider information from the Equal Access to Justice Act, 5 U.S.C. 504, the Bureau of Labor Statistic's Occupational Employment Statistics Survey, the Bureau of Labor Statistic's Employment Cost Index, and any other information determined applicable by the Board, in making a determination whether to approve a submission for reimbursement of research, development, or maintenance costs under this section or the amount of reimbursement.

(m) For purposes of this section, rights to, or obligations of, research and development reimbursement, maintenance cost reimbursement, or user fees cannot be transferred from any individual or entity unless specifically approved in writing by the Board.

§ 400.713 Non-Reinsured supplemental (NRS) policy.

(a) The reinsured company must submit three copies of the new or revised NRS policy and related materials to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676 for review, approval or disapproval at least 90 days prior to the first sales closing date applicable to the policy reinsured by FCIC.

(b) FCIC will approve the NRS policy if it does not increase or shift risk to the underlying policy or plan of insurance reinsured by FCIC, affect any rights of the insured with respect to

7 CFR Ch. IV (1-1-05 Edition)

the underlying reinsured policy or plan of insurance, or cause disruption in the marketplace for products reinsured by FCIC. Marketplace disruption includes adversely affecting sales or administration of the underlying reinsured policy, undermining producers' confidence in the Federal crop insurance program, decreasing the producer's willingness or ability to use Federally reinsured risk management products, or harming public perception of the Federal crop insurance program.

(c) Failure to timely submit the NRS policy to FCIC will result in the denial of reinsurance and subsidy for all policies reinsured by FCIC for which the insured has obtained the NRS policy.

Subpart W [Reserved]

Subpart X—Interpretations of Statutory and Regulatory Provisions

SOURCE: 63 FR 70313, Dec. 21, 1998, unless otherwise noted.

§ 400.765 Basis and applicability.

(a) The regulations contained in this subpart prescribe the rules and criteria for obtaining a final agency determination of the interpretation of any provision of the Act or the regulations promulgated thereunder.

(b) Requesters may seek interpretations of those provisions of the Act and the regulations promulgated thereunder that are in effect for the crop year in which the request under this subpart is being made and the three previous crop years.

(c) All final agency determinations issued by FCIC, and published in accordance with § 400.768(f), will be binding on all participants in the Federal crop insurance program.

[63 FR 70313, Dec. 21, 1998, as amended at 64 FR 50246, Sept. 16, 1999]

§ 400.766 Definitions.

Act. The Federal Crop Insurance Act, 7 U.S.C. 1501 *et seq.*

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

Participant. Any applicant for crop insurance, a producer with a valid crop insurance policy, or a private insurance company with a reinsurance agreement with FCIC or their agents, loss adjusters, employees or contractors.

Regulations. All provisions contained in 7 CFR chapter IV.

§ 400.767 Requester obligations.

(a) All requests for a final agency determination under this subpart must:

(1) Be submitted, in writing by certified mail to the Associate Administrator, Risk Management Agency, United States Department of Agriculture, Stop Code 0801, 1400 Independence Avenue, SW., Washington, DC 20250-0801, facsimile at (202) 690-5879 or by electronic mail at RMA533@wdc.fsa.usda.gov;

(2) State that it is being submitted under section 506(s) of the Act;

(3) Identify and quote the specific provision in the Act or regulations for which a final agency determination is requested;

(4) State the crop year for which the interpretation is sought;

(5) State the name, address, and telephone number of a contact person affiliated with the request; and

(6) Contain the requester's detailed interpretation of the regulation.

(b) The requestor must advise FCIC if the request for a final agency determination will be used in a lawsuit or the settlement of a claim.

(c) Each request for final agency determination under this subpart must contain no more than one request for an agency interpretation.

[63 FR 70313, Dec. 21, 1998, as amended at 64 FR 50246, Sept. 16, 1999]

§ 400.768 FCIC obligations.

(a) FCIC will not interpret any specific factual situation or case, such as actions of any participant under the terms of a policy or any reinsurance agreement.

(b) If, in the sole judgement of FCIC, the request is unclear, ambiguous, or incomplete, FCIC will not provide an interpretation, but will notify the requester that the request is unclear, ambiguous or incomplete, within 30 days of such request.

(c) FCIC will provide a final determination of the interpretation to a request that meets all the conditions stated herein to the requester in writing, and at FCIC's discretion in the format in which it was received, within 90 days of the date of receipt by FCIC.

(d) If a requestor is notified that a request is unclear, ambiguous or incomplete under section 400.768(b), the time to respond will be tolled from the date FCIC notifies the requestor until the date that FCIC receives a clear, complete, and unambiguous request.

(e) If a response is not provided within 90 days, the requestor may assume the interpretation provided is correct for the applicable crop year.

(f) All agency final determinations will be published by FCIC as specially numbered documents on the RMA Internet website.

(g) All final agency determinations are considered matters of general applicability that are not appealable to the National Appeals Division. Before obtaining judicial review of any final agency determination, the person must obtain an administratively final determination from the Director of the National Appeals division on the issue of whether the final agency determination is a matter of general applicability.

PART 401 [RESERVED]

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT

Sec.

402.1 General statement.

402.2 Applicability.

402.3 OMB control numbers.

402.4 Catastrophic Risk Protection Endorsement Provisions.

AUTHORITY: 7 U.S.C. 1506(l) and 1506(p).

SOURCE: 61 FR 42985, Aug. 20, 1996, unless otherwise noted.

§ 402.1 General statement.

The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994, requires the Federal Crop Insurance Corporation to implement a catastrophic risk protection plan of insurance that provides a basic level of insurance coverage to protect